I. INTRODUCTION

On November 9, 1998, The Berkshire Gas Company ("Berkshire" or "Company") petitioned the Department of Telecommunications and Energy ("Department"), pursuant to G.L. c. 164, § 94A, for approval of a gas supply contract ("Contract"), which was executed between the Company and Distrigas of Massachusetts Corporation ("Distrigas" or "DOMAC"). The petition was docketed as D.T.E. 98-110.[(1)]

Pursuant to notice duly issued, a public hearing was held at the offices of the Department on February 9, 1999. The Attorney General filed a Notice of Intervention. In support of its petition, the Company offered the testimony of Karen Zink, Director of Rates, Regulation and Resource Planning. The evidentiary record consists of fifteen exhibits and eight responses to record requests.

II. STANDARD OF REVIEW

In evaluating a gas utility's resource options for the acquisition of commodity resources as well as for the acquisition of capacity under G.L. c.164, § 94A, the Department examines whether the acquisition of the resource is consistent with the public interest. Bay State Gas Company, D.T.E. 98-79 at 1 (1998), Commonwealth Gas Company, D.P.U. 94-174-A at 27 (1996). In order to demonstrate that the proposed acquisition of a resource that provides commodity and/or incremental resources is consistent with the public interest, a local distribution company ("LDC") must show that, at the time of the acquisition or contract renegotiation, the acquisition (1) is consistent with the company's portfolio objectives, and (2) compares favorably to the range of alternative options reasonably available to the company and its customers, including releasing capacity to customers migrating to transportation. Id.

In establishing that a resource is consistent with the company's portfolio objectives, the company may refer to portfolio objectives established in a recently approved resource plan or in a recent review of supply contracts under G.L. c. 164, § 94A, or may describe its objectives in the filing accompanying the proposed resource. Id. In comparing the proposed resource acquisition to current market offerings, the Department examines relevant price and non-price attributes of each contract to ensure a contribution to the strength of the overall supply portfolio. Id. at 28. As part of the review of relevant price and non-price attributes, the Department considers whether the pricing terms are competitive with those for the broad range of capacity, storage and commodity options that were available to the LDC at the time of the acquisition, as well as with those opportunities that were available to other LDCs in the regions. Id. In addition, the Department determines whether the acquisition satisfies the LDC's non-price objectives including, but not limited to, flexibility of nominations and reliability and diversity of supplies. Id. at 29.

III. DESCRIPTION OF CONTRACT

The proposed Contract would be effective for the five-year period beginning on November 1, 1998 through October 31, 2003. The Contract entitles Berkshire to purchase up to 2,000 MMBtu of vaporized or liquid LNG on a daily basis ("Maximum Daily Quantity" or "MDQ") with a total annual contract quantity ("ACQ") not to exceed 302,000 MMBtu. (Exh. BG-1, section 1.1). The Contract allows the Company to increase the MDQ up to 1,000 MMBtu per day by giving DOMAC 120 days notice prior to the commencement of a new Contract Year (id.). A Contract Year is defined as the 12-month period from November 1 through the following October 31, inclusive (id.). The Contract provides the Company with the option to reduce its MDQ in the event that the Company's on-system sales during the heating season, adjusted for normal weather, have decreased by more than five percent from the on-system sales from the prior year's heating season. (id. at 1.2.).

Berkshire entered into the proposed Contract to replace a short term LNG supply Contract which expired on October 31, 1998. Until now, the Company has been able to contract on a year-to-year basis. (Exh. BG-2, at 5). DOMAC, however, notified Berkshire that it could not continue to guarantee the volumes on a year-to-year basis (id.). In order to ensure reliability and availability, the Company determined that a longer term contract was necessary (id.). The point of delivery for LNG will be either the truck loading flange of DOMAC's Everett Marine LNG terminal or other points, as may be mutually agreed by the parties. The points of delivery of vapor gas will be at the point of interconnection between buyer's facilities and Tennessee Gas Pipeline Company ("TGP") on a firm basis at the following locations: Pittsfield, Bousquet, North Adams, Stockbridge, Greenfield, and West Pittsfield, MA. (id. at Att. Exh. A).

The Contract price has two components (1) a Monthly Call Payment ("MCP"), and (2) a Gas Commodity Charge ("GCC"). The MCP is based on a price agreed upon by the parties and is subject to changes in the Producer Price Index (Exh. BG-1, section 5.2). The GCC is calculated based on the price agreed upon by the parties as adjusted according to a change in a ratio based on the arithmetic average of the price of gas posted in the first issue on or after the first day of each month in Inside FERC Gas Market Report for "Louisiana-Zone 1 Index", for deliveries made to TGP, for the most recent twelve month period ending October 31 (Exh. BG-1, section 5.3). The Contract allows for renegotiation or arbitration under certain conditions (Exh. BG-1, section 5.4). The parties agree that the purpose of such arbitration will be to establish a substitute price and indices, to preserve as closely as possible, the structure and economic base of the price and indices currently in effect (id.). Berkshire states that the two components of the contract price (the MCP and the GCC) are market based and representative of actual gas pipeline demand charges and gas commodity charges for supplies delivered to Massachusetts (Tr. at 20-21).

IV. THE COMPANY'S POSITION

A. Consistency with Portfolio Objectives

The Company issued a targeted solicitation by mail to nine suppliers[2] that would be able to provide a combination of vapor and liquid service to determine their willingness to provide service (Exh. BG-2 at 3). Of the nine companies contacted, DOMAC was the only provider that responded to the solicitation. (id.)

Berkshire states that its primary objective is to pursue a least cost supply strategy (Exh. BG-2 at 6). The Company's goal is to develop a long-term supply plan that achieves a proper balance of the overall goals of flexibility and reliability for its customers (id.). Berkshire states that the Contract is the least cost peaking supply option and contributes to an overall least cost supply mix (id. at 7). The Contract is flexible because the Company can ratchet the volumes up or down (id.). The Company states that the ability to take service in liquid or vapor form is consistent with the portfolio objective of maximizing the flexibility and reliability of the Company's resource plan (id.).

The Company maintains that it has several needs for LNG. The primary need is for LNG liquid during the winter period to supplement Berkshire's existing firm pipeline supplies for peakshaving purposes (id. at 2). LNG liquid is vaporized in the Greenfield Division in order to maintain sufficient system pressures during the peak and near peak periods (id.). Furthermore, the Company states that LNG vapor service is a least-cost resource during shoulder months (id.). Finally, the Company submits that the LNG could be used at the proposed facility in Whately.[3] The Company indicated that it anticipates that after the Whately facility is built, 2,893 Dth, on a maximum daily quantity basis, and 40,444 Dth, on a maximum annual quantity, will be required for that facility (RR-DTE-4). The maximum daily and annual quantities could increase each year thereafter depending on growth rates (id.).

B. Comparison with the Range of Available Options

LNG can be delivered to Berkshire on a backhaul basis, thereby enhancing reliability. The Contract allows the Company to meet hourly, daily and monthly changes in load requirements. The Company contends that as load requirements increase with new on-site storage availability, the Contract allows Berkshire to increase its daily take by 1000 MMBtu (Tr. at 30). DOMAC has similar contracts with other members of the Mansfield Consortium, including Energy North Natural Gas Company, Essex County Gas Company, City of Holyoke Gas and Electric Department, and Valley Gas Company (Exh. BG-2 at 8). The Contract contains a price increase protection clause (id.). DOMAC committed to the members of the Consortium that their price would be 95 percent of the price (at 100 percent load factor) of the firm long-term gas supplies for 151-day seasonal service delivered to local distribution companies in New England (id.). Finally, the Company has the ability to renegotiate the price under this Contract after October 31, 2000 if this Contract is priced at a level that is greater than 95 percent of similar contracts in the region at a future date (id.).

V. Analysis and Findings

The Company's objectives in contracting with DOMAC are to (1) meet its forecast peak season sendout requirements and pressure maintenance needs, (2) replace LNG volumes no longer available because of the expiration of its contracts with DOMAC, and (3) develop a least cost supply strategy. The record indicates that the two components of the contract price (the GCC and MCP), are comparable to similar prices previously approved by the Department and are based on actual gas pipeline demand charges and gas commodity charges for supplies delivered into Massachusetts (See Bay State Gas Co., D.T.E. 98-79 at 6; Bay State Gas Co., D.P.U. 95-87 at 10.). Accordingly, the Department finds that the Company's contract selection is consistent with the Company's stated objectives.

In determining whether a gas supply or capacity contract compares favorably to the range of alternative options reasonably available, the Department must consider both price and non-price attributes as part of a comprehensive assessment of the proposed Contract. The Department notes that Berkshire evaluated the price and non-price factors of the Contract and the contribution of those factors to the strength of Berkshire's overall portfolio. The Department finds that Berkshire selected resources that compare favorably to the range of alternative options reasonably available to the Company.

Because the LNG Contract is consistent with the Company's portfolio objectives and compares favorably to the range of alternative options reasonably available to the Company and its customers, the Department finds that Berkshire's acquisition of this resource is consistent with the public interest and, therefore, the Contract filed on November 9, 1998 is approved.

VI. ORDER

Accordingly, after due notice, hearing and consideration, it is

ORDERED: That the gas supply Contract for peak-season sendout requirements between The Berkshire Gas Company and Distrigas of Massachusetts Corporation filed on November 9, 1998 is hereby approved.

By Order of the Department,

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Janet Gail Besser, Chair

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James Connelly, Commissioner

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W. Robert Keating, Commissioner

Paul B. Vasington, Commissioner

Eugene J. Sullivan, Jr., Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).

1. Also on November 9, 1998, the Company filed a Motion for Protective Treatment of Confidential Information ("Motion") requesting that pricing information, and terms and conditions in the Contract between the Company and Distrigas be protected from public disclosure. (Motion at 1). On January 22, 1999, Berkshire filed its responses to the first set of information requests and sought to amend its Motion for Protective Treatment to include responses to certain information requests which the Company described as price-related provisions in the Contract. On February 8, 1999, the Hearing Officer granted the Company's motion with respect to actual pricing information only. (Hearing Officer Ruling at 3).

2. The Company contacted DOMAC, Duke Energy, Dynergy, El Paso Energy, Enron, U.S. Generating Company, Bay State Gas Company, Boston Gas Company, and Commonwealth Gas Company (Exh. DTE-5).

3. On February 2, 1999, Berkshire filed a petition with the Energy Facilities Siting Board (E.F.S.B.) for approval to construct an LNG storage facility in the town of Whately. The matter was docketed as D.T.E. 99-17; E.F.S.B. 99-2 and is currently under review by the E.F.S.B.